

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

MAR 29 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**In the Matter of Service Rules for the
746-764 and 776-794 MHz Bands,
and Revisions to Part 27 of the
Commission's Rules**

WT Docket No. 99-168

**Auction of Licenses For The 700 MHz
Guard Bands Scheduled for
June 14, 2000**

DA 00-559

To: The Commission

REPLY COMMENTS OF MOBEX COMMUNICATIONS, INC.

Mobex Communications, Inc. ("Mobex") hereby respectfully submits its Reply Comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice released on March 10, 2000 in the above-captioned matter.¹ In the Public Notice, the Commission invited discussion concerning various issues associated with the upcoming auction of the 6 MHz Guard Band ("Guard Band") in the 700 MHz spectrum.

I. BACKGROUND

1. Four parties submitted Comments to the Commission's March 10, 2000 Public Notice, including Mobex, the American Mobile Telecommunications Association, Inc. ("AMTA"),

¹ *Public Notice, Comment Sought on Reserve Prices or Minimum Opening Bid and Other Auction Procedural Issues, DA 00-559 (rel. Mar. 10, 2000) (Public Notice).*

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Motorola, Inc. ("Motorola") and the Industrial Telecommunications Association, Inc. ("ITA"). AMTA, ITA, Motorola and Mobex are all in agreement that the Commission's proposed minimum bids would be cost prohibitive for many small businesses, and therefore, would have a chilling effect on their ability to realistically participate in the Guard Band auction. In particular, the responding parties addressed three reasons that the Commission's stated value of the Guard Band spectrum should be reassessed. These reasons are: 1) the Guard Band spectrum will likely face significant interference problems; 2) the level of incumbency by current spectrum holders will limit the initial use of this spectrum; and 3) the proposed formula for determining the spectrum's value should be adjusted.

II. COMMENTS

A. Use of The Guard Band Spectrum Will Be Limited by Significant Interference From Adjacent Commercial and Public Safety Users.

2. Motorola, ITA and AMTA raise concerns regarding potential interference from users within the 30 MHz of the main block of auctioned spectrum. AMTA correctly asserts that because there are to be no out-of-band limitations imposed upon users of the main 30 MHz block of spectrum, "the cost of this policy choice will fall on Guard Band Managers and those who use their spectrum."² ITA addresses the same interference concern, and correctly asserts that due to these potential limitations, it will be "that much more difficult to attract a wide pool of prospective 'Guard Band Managers.'"³ Motorola also addresses the same concerns, and

² *Comments of The American Mobile Telecommunications Association, Inc.*, DA 00-559, WT Docket No. 99-168, submitted March 22, 2000, at paragraph 6 (hereinafter "AMTA Comments").

³ *Comments of The Industrial Telecommunications Association, Inc.*, DA 00-559, WT Docket No. 99-168, submitted March 21, 2000, at page 3 (hereinafter "ITA Comments").

believes that these interference factors must be “seriously considered in establishing upfront payment and minimum opening bid levels.”⁴

3. The Public Safety requirements that are associated with this spectrum further reduce its potential value. AMTA notes that, “the economic utility of the Guard Band allocation will be affected by even by the technical requirements adopted to ensure interference protection for public safety systems . . . The availability of some Guard Band spectrum necessarily, therefore, will be dependent on the location and station parameters of proximate public safety systems.”⁵ Due to these public safety constraints, the Guard Band spectrum will not necessarily be utilized to its maximum capabilities. Mobex respectfully requests the Commission to act accordingly by reducing its valuation of this spectrum.

B. The Guard Band Spectrum’s Value is Diminished Due to the Uncertainty of When Current Incumbents Will Be Required To Vacate.

4. There is strong speculation as to when current incumbents within the Guard Band Spectrum will be required to vacate. Due to an inability to realize any financial return on some of this spectrum until December, 2006 *at the earliest*, any potential Guard Band Manager will be faced with significant delay on their financial investment.

5. AMTA notes that the Guard Band’s utility is, “affected . . . by the existence of co-channel or adjacent channel television broadcast stations in virtually every market of significant size around the nation.”⁶ Furthermore, there is a significant concern that some licensees may be able to extend their vacancy deadlines, thereby further limiting the Guard Band’s effective use.

4 *Comments of Motorola, Inc.*, DA 00-559, WT Docket No. 99-168, submitted March 22, 2000, at page 3 (hereinafter “ Motorola Comments”).

5 *AMTA Comments*, at paragraph 7.

6 *AMTA Comments*, at paragraph 5.

As AMTA correctly asserts, “It will be at least six years, *and perhaps substantially longer, before Guard Band Managers actually will be able to utilize the lion’s share of this spectrum in the most commercially viable markets in the country . . . a relative eternity in a wireless marketplace that reinvents itself almost daily.*”⁷

6. Mobex believes that these observations are valid, and asks the Commission to decrease the value of this spectrum. By ignoring the extensive timeline in which it will take for the Guard Band spectrum to be fully utilized, the Commission is inflating its actual value.

C. Motorola’s Proposed Spectrum Valuation Should Be Adopted By The Commission.

7. Mobex believes that Motorola’s proposed spectrum valuation should be thoroughly examined. Motorola has proposed that in order to more fully ensure the participation of small businesses in the bidding process, the Commission should consider the use of formulas similar to those used in the recent 220 MHz auction.⁸

8. Mobex agrees that Motorola’s proposal “renders a much more reasonable and acceptable valuation for aggregate minimum opening bids.”⁹ Motorola further asserts that additional modifications of upfront payments and minimum bids should also be adjusted for markets where encumbrances by co-channel and adjacent channel television stations exist. Mobex believes that adoption of such a standard, “will provide better assurance that the Guard Band licenses will be sold, in keeping with the Commission’s goals to provide spectrum to the public at a reasonable price in an expeditious manner.”¹⁰

⁷ *Id.* (emphasis added) (see also, *Motorola Comments* at page 2).

⁸ See *Motorola Comments*, at pages 4 – 6.

⁹ *Motorola Comments*, at page 5.

¹⁰ *Id.* at 6.

III. CONCLUSION

9. Due to the significant encumbrances placed upon the Guard Band spectrum, the Commission's current proposed minimum bids are unrealistically high. The minimum opening bids do not reflect the potential interference from commercial users as well as the significant limitations on this spectrum due to Public Safety concerns. The proposed bid valuation put forth by Motorola more accurately reflects the true value of this Guard Band spectrum. Mobex therefore encourages the Commission to determine more reasonable values for the minimum opening bids.

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Dated: March 29, 2000.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REPLY COMMENTS was served this 29th day of March, 2000 by hand delivery to:

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